



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

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**To:** All DMs, FOMs, DSDs,  
Authorized Officer, Office of Pipeline Monitoring, and  
Fire Management Officer (Division of Fire and Aviation)

**From:** State Director

**Subject:** Bureau of Land Management (BLM) - Instructions and policy for compliance with  
Section 810 the Alaska National Interest Lands Conservation Act (ANILCA)

**Program Area:** Subsistence, National Environmental Policy Act (NEPA)

**Purpose:** This Instruction Memorandum (IM) contains information on, and describes the process for  
BLM-Alaska's compliance with requirements of Title VIII of ANILCA.

**Policy/Action:** Adherence to BLM-Alaska's ANILCA 810 process is required for all land use actions  
that either withdraw, reserve, lease or otherwise permit the use, occupancy, or disposition of BLM  
managed public lands. This document also covers the procedural requirements of ANILCA Section  
810 for NEPA related planning and decision processes.

**Timeframe:** This policy is available for immediate use.

**Budget Impact:** There are no budget impacts.

**Background:** BLM-Alaska's policy for compliance with Section 810 of ANILCA has been updated  
and is being made available for use.

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## 10 Attachments

- 1 – Policy (15 pp)
- 2 – Appendix 1, ANILCA Title VIII, Section 810 (1 p)
- 3 – Appendix 2, Natural Fire and Fire Suppression (1 p)
- 4 – Appendix 3, Evaluation of Permits for Subsistence Activities (1 p)
- 5 – Appendix 4, 3809 Surface Management of Mining (2 pp)
- 6 – Appendix 5, Guidance Concerning the Adequacy and Use of Data for Making 810 Evaluations (2 pp)
- 7 – Appendix 6, Significance (3 pp)
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# Compliance with ANILCA Section 810

## **I. Introduction**

Public Law 96-487, the Alaska National Interest Lands Conservation Act (ANILCA), Title VIII, Section 810, subtitled Subsistence and Land Use Decisions, outlines the requirements for addressing impacts to subsistence uses of resources in the federal land use decision-making process in Alaska (see **Appendix 1**).

Procedurally, subsection 810(a), depending on circumstances, requires up to four steps. These steps are:

1. An **evaluation**, which consists of three major parts;
2. A **finding** of whether or not a proposed action may have significant restriction on subsistence uses;
3. **Notice and hearing**, if an action may have a significant restriction on subsistence uses; and
4. If there may be a significant restriction on subsistence uses, a **three-part determination** must be made before the action may be authorized.

ANILCA Section 810 also contains the procedural requirement that, under the National Environmental Policy Act (NEPA), if an Environmental Impact Statement (EIS) is to be prepared, the 810 process will be combined with the EIS process so as not to duplicate potentially redundant tasks. BLM-Alaska policy is that compliance with 810 requirements will be incorporated as part of both the Environmental Assessment (EA) and EIS process, and will be a prominent part of the decision documentation. Compliance with Section 810 requirements will be prepared as a separate document only if an EA or EIS is not required.

An ANILCA Section 810 Evaluation is required for all land use actions, even if such action is covered by NEPA Categorical Exclusions (CXs) or Determinations of NEPA Adequacy (DNAs). This document provides the detailed policy for incorporating all Section 810 requirements into BLM-Alaska's NEPA process and other relevant planning and decision processes.

## **II. Applicability of Section 810 to BLM Actions**

A Section 810 Evaluation is required for any action to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands in Alaska under any provision of law authorizing such actions. This applies whether the action is a request from outside the agency or initiated by the agency. Conducting ANILCA 810 evaluations in Alaska on public lands is mandatory for virtually all Federal land use decisions; exceptions to conducting an evaluation would be very rare (see **Appendix 2 Natural Fire and Fire Suppression** and **Appendix 3 Evaluation of Permits for Subsistence Activities**).

Public lands, as defined by ANILCA (Section 102), are all Federal lands in Alaska except:

- Land selections of the State of Alaska which have been tentatively approved or validly selected under the Statehood Act;<sup>1</sup>
- Land selections of a Native Corporation made under the Alaska Native Claims Settlement Act which have not been conveyed to the Native Corporation, unless the selection is determined invalid or relinquished; and
- Lands referred to in section 19(b) of ANCSA, (which are village corporation lands that were reserved prior to the passing of ANCSA).

Section 810 also applies to lands in which the BLM manages the subsurface but does not own the surface, given the ANILCA definition of land as “lands, waters, and interests therein.”

Section 810 evaluations are not required for actions:

- That are non-discretionary for BLM, specifically: 1) Conveyances to the State of Alaska under the Alaska Statehood Act and other authorities, 2) Conveyances to Regional and Village Corporations in accordance with the Alaska Native Claims Settlement Act (ANCSA), 3) conveyances to individual Alaskan Natives under the Native Allotment Act and the Alaska Native Veterans Allotment Act, 4) Casual Use and Notice-level 3809 actions (see **Appendix 4 - 3809 Surface Management of Mining**), and 5) Recordable Disclaimers of Interest on navigability decisions;
- That do not withdraw, reserve, lease or otherwise permit use, occupancy or disposition of public lands.

While State selected lands are considered exempt from requiring a Section 810 Evaluation, the priority of the State’s selections should nevertheless be a consideration when making land use decisions. Because of over-selections, low priority lands will likely revert to being BLM administered public lands and therefore subject to Section 810 requirements in the future. The public may be best served by satisfying the Section 810 requirements even though it may not be legally required. There are no categorical exclusions for 810 evaluations. Therefore, Section 810 Evaluations are required for all land use actions on public lands. Section 810 Evaluations must be conducted in conjunction with NEPA categorical exclusion documentation (CXs) and with determinations of NEPA adequacy (DNAs).

### **III. Components of an 810 Evaluation for BLM Environmental Impact Statements**

ANILCA 810 Evaluations for EISs begin with an overview of the proposed action and alternatives, and a description of the sections within the EIS where reference information or data is located that is directly relevant to the 810 evaluation (usually *Chapter 3 Description of the Affected Environment* and *Chapter 4 Environmental Consequences*; see *BLM Handbook H-1790-1 National Environmental Policy Act handbook*, 2008). Following the overview of the proposed action and alternatives is a summary of the 810 process, as quoted from the legislation itself,

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<sup>1</sup> The sole exception to State selected lands not meeting the definition of public lands are any State selections in a Conservation System Unit ( CSU, e.g., Steese-White Mountains, and Wild and Scenic River Corridors). Such CSU lands are to be administered under applicable laws until actually conveyed (ANILCA Section 906(o)(2); §50CFR 100.4(2)).

which includes a description of the relevant legal definitions, mandated policy, and any other legislation that may be relevant to subsistence and land use decisions. When complete, an 810 Evaluation is commonly inserted as an appendix to the FEIS.

### **Additional Applicable Requirements**

Executive Order 13175 *Consultation and Coordination with Indian Tribal Governments* (November 6, 2000) establishes principles and standards for government-to-government consultation with tribal governments on “policies that have tribal implications.” Land use decisions with the potential to significantly restrict subsistence uses of rural Alaskans are commonly matters that also may have a tribal implication. Consultation with tribal governments on subsistence, along with other issues, is an integral part of the public involvement process for an EIS. While Section 810 does not establish separate or additional requirements concerning consultation with tribal governments, the Section 810 review benefits from outreach to the tribal governments through the EIS. Additional guidance is found in the Department of the Interior-Alaska Policy on Government-to-Government Relations with Alaska Native Tribes, in BLM Manual 8120—Tribal Consultation Under Cultural Resources, and in BLM Handbook 8120-1—General Procedural Guidance for Native American Consultation.

Executive Order 12898 *Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations* establishes principles and standards for Federal agencies “identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects...on minority populations and low income populations.” Section 4.4 focuses attention on subsistence consumption of fish and wildlife. An Environmental Justice analysis with regard to subsistence consumption, as well as other issues, is usually included as part of an EIS. No separate or additional examination of environmental justice considerations is required by Section 810. However, a statement that these concerns have been addressed in the EIS has been considered a necessary addition to the Section 810 evaluation by the regional solicitor of Alaska since 2003.

Example of Environmental Justice Statement to be included in Section 810 Evaluations:

*In addition to ANILCA, Environmental Justice, as defined in Executive Order 12898, also calls for an analysis of the effects of federal actions on minority populations with regard to subsistence. Specifically, Environmental Justice is:*

*The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people, including racial, ethnic, or socioeconomic group should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.*

*Section 4.4 of Executive Order 12898, regarding the Subsistence Consumption of Fish and Wildlife, requires federal agencies to collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence, and to communicate to the public any risks associated with the consumption*

*patterns. To this end, the subsistence analyses of all alternatives, located in Chapter 4 (Environmental Consequences) of the Amended IAP/EIS, have been reviewed and found to comply with Environmental Justice.*

Additional guidance is found in the CEQ document, Environmental Justice – Guidance under the National Environmental Policy Act, December 1997.

### **Steps in the ANILCA 810 process for an EIS**

As noted above, an ANILCA Section 810 Evaluation is a four-step process (**Figure 1**) However, in cases consisting of minor actions limited in geographic scope or impact, only the first two steps may be required to fulfill the mandate. Of the environmental documents prepared by the BLM, EISs are those that have the greatest potential for requiring a full, four-step Section 810 Evaluation. The steps in this process are also referred to as the two-tiered approach to conducting an ANILCA 810 Evaluation, where steps 1 and 2 are considered the first tier, and steps 3 and 4 comprise the second tier.

#### **Step 1: Evaluate**

This initial step of the 810 process, as specified within the legislation, consists of three very specific factors that must be addressed. These three factors must be analyzed and separately described for each alternative, including the cumulative effects analysis. It may also be the case that the Final EIS will contain alternatives different from those in the Draft EIS. In this situation, if a new alternative is considerably different from the actions that were already analyzed, then the new alternative must also be analyzed using the four steps.

#### **Factor 1. Evaluate the effect of each of the EIS's proposed action(s) and alternatives on subsistence uses and needs.**

An Section 810 Evaluation shall include sufficient information so the Authorized Officer can make the decisions and determinations required by Section 810. The data should be appropriate to the level and kind of action being considered (see **Appendix 5 Guidance Concerning the Adequacy and Use of Data for Making 810 Evaluations**). EISs and EAs assess the direct, indirect and cumulative impacts of the proposed action and alternatives. Usually, EISs in Alaska include detailed sections of information on subsistence resources in the affected area, traditional and current levels of subsistence use, and an analysis of the impacts of the proposed action and alternatives on subsistence use. This information is found in Chapter 3 *Affected Environment* and Chapter 4 *Environmental Consequences* of the EIS, and comprises the primary data used to satisfy Step 1 of the 810 Evaluation.

The evaluation shall provide clear reasoning which a third party can follow, and then reach a similar conclusion. Further, the evaluation must, at a minimum, address the following by stating whether or not, for each alternative, there is likely to be:

- A reduction in the **abundance** of harvestable resources used for subsistence purposes. This, for example, may include fish, wildlife, edible flora, house logs, fuel wood, drinking water, etc. Forces that might cause a reduction include adverse impacts on

habitat, direct impacts on the resource, increased harvest and increased competition from non-subsistence harvesters.

- A reduction in the **availability** of resources caused by an alteration in their distribution, migration, or location.
- A limitation on the **access** of subsistence users to harvestable resources. Such an evaluation includes only physical and legal barriers.

Proposed actions or alternatives on lands that are closed to subsistence hunting (e.g., the Anchorage Management Area) nonetheless require an ANILCA 810 Evaluation. However, the evaluation will not need to have the same level of detail. For example, an action proposed for BLMs Campbell Tract in Anchorage would not require an analysis of subsistence uses and needs, but rather a statement regarding the lack of subsistence use and need because the area is closed to subsistence use.

## **Factor 2. Evaluate the availability of other lands for the purposes sought to be achieved.**

ANILCA Section 810 requires, in part, that when an action is proposed on Federal land that the Federal agency:

shall evaluate...the availability of other lands for the purposes sought to be achieved...which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes.

Under this factor, it must first be determined that the proposed action and/or alternatives are to occur on lands needed for subsistence purposes. “Needed for subsistence purposes” implies that the land is either directly used for subsistence activities (berry picking, hunting, etc.) or that it is used for a portion of the life cycle of a resource which may be harvested by subsistence users at another location. Then the question becomes which other lands should be considered?

When making an evaluation on the “availability of other lands” two aspects must be considered:

- Are there other lands available in terms of timing, ownership and designation?
- Are there other lands available to meet the purpose and need of the proposed action?

Availability in terms of timing, ownership, and designation means lands that conform to the same general parameters as the proposed public lands. For example, a land area available 20 years from now because of legal entanglements has no value for a project needed or desired today. The lands must be available within the time frame of the proposed action or alternatives. If the purpose to be achieved requires a particular ownership, then only lands in that ownership need to be considered. Conversely, if ownership makes little or no difference, then any lands may be considered. However, land, no matter the ownership, is not to be considered if it is outside of Alaska. Finally, lands that have been designated for land uses that preclude the proposed action or alternatives are not to be considered as available. For example, certain uses are prohibited in designated wilderness; therefore, these lands may not be available for consideration in all instances.

Availability for the purposes sought to be achieved refers to lands that are appropriate for the proposed action or alternatives. If the purpose to be achieved by the proposed action requires specific environmental parameters, then only lands having the same attributes need to be considered. For example: A port site in Southeast Alaska will not serve Kotzebue; the Arctic tundra need not be evaluated for logging; and an unknown or unexplored area will not substitute for an area with known mineral deposits. In other words, lands selected for evaluation must have a reasonable geographic and resource relationship to the purpose to be achieved by the proposed action.

Like the above discussion, proposed actions or alternatives on lands plainly not used for subsistence purposes would not need consideration of other lands. Nonetheless, a clearly worded statement reporting this fact would be required in an 810 Evaluation. For example, actions potentially located at the BLM Campbell Tract facilities in Anchorage would not require that other lands be evaluated, because the area is not used for subsistence purposes. In this case, a statement that the proposed action is located on lands that are not used for subsistence purposes is appropriate.

**Factor 3. Evaluate other alternatives that would reduce or eliminate the proposed action(s) from lands needed for subsistence purposes.**

Section 810 of ANILCA requires, in part, that when an action is proposed on Federal land that the Federal agency:

shall evaluate...other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes.

Alternatives to be evaluated under Factor 3 are other ways to accommodate the proposed action or other actions, and not other sites for the proposed action(s). The other actions selected for evaluation should be reasonable, physically and technically possible, economically feasible, and capable of reducing or eliminating the proposed action(s) from lands needed for subsistence purposes.

When an 810 Evaluation is being prepared, the EIS alternatives are generally adequate to also fulfill the “evaluate other alternatives” requirement in ANILCA Section 810(a). However, an 810 Evaluation is not constrained to only consider EIS alternatives. Alternatives could be a mixture of alternative sites and alternative parameters, and the analyst may consider portions of the EIS alternatives to address factor 2 above, as well as this factor (factor 3).

**Sources of Information for the Evaluation**

Generally, Chapter 3 *Affected Environment* in an EIS will include descriptions of subsistence resources and subsistence uses, and Chapter 4 *Environmental Consequences* will examine the impacts of the various alternatives on subsistence resources and use patterns. The 810 Evaluation is an exercise in distilling and summarizing the information provided in the main body of the EIS. However, the analyst should verify that full use has been made of information provided in scoping comments or other testimony, as well as documentary sources, such as the ADF&G Subsistence Division technical papers, anthropological literature, or unpublished subsistence use



information gathered by regional or local native organizations (see **Appendix 5 Guidance Concerning the Adequacy and Use of Data for Making 810 Evaluations**).

## **Step 2. Finding**

The Section 810 Evaluation shall conclude with a distinct Finding that the proposed action and alternatives may or will not significantly restrict subsistence uses for identified subsistence communities or groups. (Note: Do not use wording like “probably” or “likely” will not significantly restrict).

A finding of *may significantly restrict* requires that the process be stopped for the action and the action prohibited; **or** that the agency proceed to the notice and hearings step described below. A finding of no significant restriction completes the Section 810 process.

A proposed action and/or alternatives would be considered to significantly restrict subsistence uses if, after consideration of any stipulations or protection measures (i.e., Oil and Gas Leasing Stipulations, Required Operating Procedures, etc.) included as a part of each alternative, it can be expected to result in a substantial reduction in the opportunity to continue subsistence uses of renewable resources. Substantial reductions in the opportunity to continue subsistence uses generally are caused by: large reductions in the abundance, or a major redistribution of resources; extensive interference with access; or major increases in the use of those resources by non-subsistence users (see **Appendix 6 Significance**). A proposed action and/or alternatives may be found to not create a significant restriction, but it may be appropriate for the analyst to identify and attempt to mitigate localized, individual restrictions created by an action.

The Findings shall be stated as either:

*This evaluation concludes that the action will not result in a significant restriction in subsistence uses; or*

*This evaluation concludes that the action may result in a significant restriction to subsistence uses for the communities of \_\_\_\_\_ due to (specify causes).*

The first Finding, above, is frequently referred to as a Negative Finding, in that no significant restrictions are expected to occur. Likewise, the second Finding is commonly referred to as a positive finding, in that significant restriction may be expected to occur.

In some cases, individual alternatives will fall below the may significantly restrict threshold, and only the cumulative case exceeds the threshold. It should be noted that the cumulative effects analysis is not, in and of itself, a proposed action. Instead, the purpose of the cumulative effects analysis is to determine the effects of the proposed action and alternatives together with other past, present, and reasonably foreseeable future actions. In this way, a finding of *may significantly restrict subsistence uses* in the cumulative case is, in effect, a positive finding, even though the finding is only noted under the cumulative case. A positive finding in the cumulative case triggers the Notice, Hearing, and Determination requirements of ANILCA Section 810(a).

### **Step 3. Notice and Hearings**

If the above evaluation of a proposed action or alternatives results in a positive finding of significant restriction of subsistence uses and the authorized officer wishes to proceed with that action, the officer shall:

- Give notice to the Commissioner of the Alaska Department of Fish and Game;
- Give notice, through the Office of Subsistence Management, to the appropriate Regional Advisory Council(s); and
- Give notice and hold a public hearing in the vicinity of the area involved (see **Appendix 7 Notice and Public Hearings**).

NEPA requires a Federal Register Notice of Availability when a DEIS is available for public comment. If there is a positive Finding for any alternative or resulting from the cumulative case, then this Notice of Availability must include the Section 810 Findings, and should include a schedule of the ANILCA 810 Hearing, if possible. Best practices for fulfilling the notice and hearing requirement include additional notice of the finding through direct correspondence, including a specific ANILCA 810 Hearing announcement in the community (or communities) identified as impacted, with adequate time (typically 15 days 43CFR1610.2) for residents to review the preliminary 810 Evaluation and findings before the hearing.

Following the public hearing, it is possible that the Finding may be revised to “will not significantly restrict subsistence uses” based on changes to alternatives, new information, or new mitigation measures resulting from the hearing(s). In such a case, this situation will be documented in the final 810 Evaluation and the action may proceed as appropriate. If, however, following incorporation of information from the public hearing(s) the finding of a significant restriction remains, the Authorized Officer may prohibit the action, or proceed to Step 4, final determinations.

### **Step 4. Final Determinations**

An 810(a)(3) Determination section is to be prepared only when there is a finding of “may significantly restrict subsistence uses” for the selected alternative/action. If the cumulative case reveals a positive finding, then, in effect, the alternative under consideration will have a positive finding, since the cumulative case is considered in conjunction with each alternative. The determination shall separately address each of the three required items under 810(a)(3), clearly stating why the proposed action is necessary and how the action complies with each requirement. The section will conclude with a single declaratory statement (see example below).

The three items that require a determination are:

- Such a significant restriction of subsistence uses is necessary, and is consistent with sound management principles for the utilization of the public lands;

- The proposed activity will involve the minimum amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition; and
- Reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.

In making these determinations, sufficient justification needs to be provided. For example, the proposed action may be necessary and consistent as a result of statutory, regulatory or policy direction (i.e., granting of a Right-Of-Way for transportation or utility systems under ANILCA Title II; a requirement under Federal Land Policy Management Act; an exploration program is mandated by the Naval Petroleum Reserve Production Act, etc.). In making the “*minimal amount of public lands*” determination, much of the justification will be found in the “*availability of other lands*” evaluation for the Selected Alternative. The measures to be taken by the BLM to mitigate the identified impacts to subsistence use that accompany the selected alternative are reasonable steps that minimize impacts to subsistence use, and should be described in detail.

An example of a concluding declaration in the Section 810 Evaluation is:

*The BLM has determined that, after consideration of all alternatives, subsistence evaluations, and public hearing(s), such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of this land, and that the selected alternative will involve the minimal amount of public lands necessary to accomplish the (selected alternative). Finally, reasonable steps have and will be taken to minimize the adverse impacts upon subsistence uses and resources arising from this action.*

After compliance with the above 810 process the Authorized Officer may proceed with the action. This concludes compliance with ANILCA 810.

### **Combining ANILCA 810 and the EIS Process**

When an action requires the preparation of an EIS, the preliminary Section 810 Evaluation shall be included in the Draft Environmental Impact Statement (DEIS), commonly as an appendix. However, given that the final determinations outlined in Step 4, above, are made after the required hearing(s) are held and only if the final selected alternative retains a positive finding, this means that the Section 810 Evaluation in the DEIS will not include the three items requiring a final determination outlined in Step 4. Instead, it is appropriate to include a statement to the effect that the final determinations required pursuant to Section 810(a)(3) will be included in the final 810 Evaluation submitted with the EIS.

### **Example of a DEIS 810(a)(3) Statement to be included in a preliminary 810 Evaluation with the Draft EIS:**

*Subsistence Determinations Under ANILCA § 810(a)(3)(A), (B), and (C)*

*ANILCA § 810(a) provides that no “withdrawal, reservation, lease, permit, or other use, occupancy or disposition of the public lands which would significantly restrict subsistence uses shall be effected” until the federal agency gives the required notice and*

*holds a hearing in accordance with ANILCA §810(a)(1) and (2), and makes the three determinations required by ANILCA § 810(a)(3)(A), (B), and (C). The three determinations that must be made are: 1) that such a significant restriction of subsistence use is necessary, consistent with sound management principles for the utilization of the public lands; 2) that the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other such disposition; and 3) that reasonable steps will be taken to minimize adverse impacts to subsistence uses and resources resulting from such actions [16 U.S.C. § 3120(a)(3)(A), (B), and (C)].*

*The BLM has found in this ANILCA 810 Evaluation that (Alternative(s) \_\_, or the cumulative case) considered in this EIS may significantly restrict subsistence uses. Therefore, the BLM will undertake the notice and hearing procedures required by the ANILCA § 810 (a)(1) and (2) in conjunction with release of the Draft EIS in order to solicit public comment from the potentially affected communities and subsistence users.*

*Should the proposed action have a positive finding, the determination that the requirements of ANILCA § 810(a)(3)(A), (B), and (C) have been met will be analyzed in the Final ANILCA § 810 Evaluation, and will be presented in the FEIS, and will include testimony and input from the communities in which subsistence hearings will be held.*

Notice and hearing are required if the proposed action or any alternatives being considered may significantly restrict subsistence uses. The notice and hearing requirements pursuant to Section 810 shall be combined with the EIS process, in that, if public meetings are scheduled for the DEIS, ANILCA Section 810 hearings should be held concurrent to the DEIS public meeting(s), so as to limit the impact to communities. If the DEIS public meeting(s) and ANILCA Section 810 hearing(s) are held concurrently, then the announcements for the meeting must also state that an ANILCA Section 810 hearing, with an opportunity for public testimony, will be held in conjunction with the meeting.

The FEIS will contain the Final ANILCA Section 810 Evaluation outlined in steps 1-4 above (see **Appendix 8 Example of a Section 810 Evaluation for a FEIS**). The analyst should ensure that testimony on impacts to subsistence, acquired from the hearings held in affected communities, is included in the analysis of alternatives as presented in Chapter 4 of the Final EIS. Additionally, the Section 810 Evaluation may require revision to include testimony and/or mitigation measures that were created in response to the testimony.

The Record of Decision (ROD) shall contain a section entitled ANILCA 810 Summary, which shall briefly summarize the evaluation, findings, notice given, hearings held, and final determinations for the selected alternative, including determinations resulting from analysis of cumulative effects of the selected alternative.

If the final selected alternative in the FEIS contains considerably different management actions from those contained in the range of alternatives that appeared in the DEIS, NEPA requires analysis of this new alternative. The Steps 1-4 of the ANILCA 810 process will also have to be completed for any new alternative requiring NEPA analysis. If this new alternative is found to have a positive finding pursuant to ANILCA Section 810, then the notice-and- hearing step,

above, will have to take place, and the final determinations will have to be made for this alternative.

#### **IV. Components of an 810 Evaluation for an EA**

An Environmental Assessment (EA) is a concise environmental document that is prepared under NEPA to determine the significance of effects from a proposed action and that serves as a basis for reasoned decision. If it is found that the proposed action will not result in a significant impact, then the EA results in a Finding of No Significant Impact, or FONSI. The data and information presented in the main body of an EA is usually less detailed than that of an EIS. Subsistence information may be found within the EA in the discussion of the affected environment and environmental impacts. Impacts to resources important for subsistence use (i.e., wildlife, fisheries, and habitat) may also be discussed in an EA. At a minimum, subsistence issues will be addressed in the Section 810 Evaluation accompanying the EA.

The Section 810 Evaluation accompanying an EA shall include sufficient information so that the authorized officer may decide if the action may or will not restrict subsistence uses as required by ANILCA Section 810. The data should be appropriate to the level and kind of action being considered, and may include such things as information on subsistence resources, current levels of subsistence use, and current hunting and fishing regulations in the affected area. If the EA includes multiple alternatives, each must be separately analyzed for impacts to subsistence uses. When an EA is prepared, the Section 810 Evaluation shall be included as part of that document, commonly as an appendix, and the Section 810 Findings section shall be a clearly identified.

#### **Additional Applicable Requirements**

Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*, (November 6, 2000), establishes principles and standards for government-to-government consultation with tribal governments on “policies that have tribal implications.” Land use decisions with the potential to significantly restrict subsistence uses of rural Alaskans are commonly matters that also may have a tribal implication. Consultation with tribal governments on subsistence, along with other issues, should be considered in designing the appropriate level of public involvement for an EA. ANILCA does not establish separate or additional requirements concerning consultation with tribal governments. Remember, while a Section 810 review could benefit from outreach to the tribal governments through the EA, Federal subsistence is a rural Alaskan program, not a native program. Additional guidance is found in the Department of the Interior-Alaska Policy on Government-to-Government Relations with Alaska Native Tribes, and in Section 8120-1 of the BLM Handbook – General Procedural Guidance for Native American Consultation.

#### **Steps in the ANILCA 810 Evaluation for an EA**

A Section 810 Evaluation for an EA usually requires the completion of only the first two steps of the 4-step process. Since EAs commonly conclude with a Finding of No Significant Impact (FONSI), it is possible that the subsistence impact analysis may also find no significant restriction. If that is indeed the result, the 810 Evaluation would conclude with a finding of *will*

*not significantly restrict subsistence uses*, and the notice and hearing and final determination requirements are not necessary (see **Appendix 9 Example of an 810 Evaluation for an EA**).

### **Step 1: Evaluate**

When doing the Section 810 Evaluation for an EA, the evaluation must address three factors.

#### **Factor 1. Evaluate the effect of the proposed action(s) and alternatives on subsistence uses and needs.**

Consider the effects to subsistence uses and needs for a proposed action and alternatives in an EA. Because subsistence can be closely related to fisheries, wildlife, vegetation and access, consider these categories when determining whether subsistence impacts are potentially significant.

#### **Factor 2. Evaluate the availability of other lands for the purposes sought to be achieved.**

In an EA, the proposed activity and alternatives are usually limited in scope. Therefore, the analysis of other lands in the Section 810 Evaluation may be very brief, because other lands for the purposes sought to be achieved are not appropriate or available. In fulfilling this requirement, a simple statement regarding the unavailability of other lands may be all that is needed.

For example:

*Lands available for the purposes proposed by the applicant are limited to BLM lands that are \_\_\_\_\_ (i.e., accessible from the base camp; or adjoining the WSR; or located in the guide's permitted use area by the State of Alaska). Therefore, no other lands are available for this intended purpose.*

#### **Factor 3. Evaluate other alternatives that would reduce or eliminate the proposed action(s) from lands needed for subsistence purposes.**

Commonly, EAs consist of at least two alternatives: the proposed action, and a no-action alternative. As a result, an analysis of this topic may be very brief.

For example:

*Two alternatives were evaluated in this EA—the proposed action, and the no-action alternative. The no action alternative would require BLM to reject the permit application; however, there is no substantial evidence that would indicate a significant restriction to subsistence as a result of the proposed action.*

### **Sources of Information for the Evaluation**

Generally, EAs are focused and concise documents that might not contain a lot of detailed information relative to subsistence. It may be necessary for the 810 analyst to research additional information specific to subsistence uses and potential impacts to these uses, in order to

adequately evaluate the proposed action. This information should be included in the Section 810 Evaluation (see **Appendix 5 Guidance Concerning the Adequacy and Use of Data for Making 810 Evaluations**).

## **Step 2. Finding**

The evaluation shall conclude with a distinct finding that the proposed action and alternative(s) may or will not significantly restrict subsistence uses. (Note: Do not use wording like “probably” or “likely” will not significantly restrict).

## **Procedure if Significant Restrictions are Identified**

If an EA concludes with a Finding of No Significant Impact (FONSI) for the selected alternative, there could potentially be a finding of no significant restriction on subsistence uses. If the analyst perceives that a finding of significant restriction on subsistence use may occur for the proposed action, the analyst shall notify the Authorized Officer, who is usually the field office manager. The Authorized Officer may then choose to modify the alternatives that resulted in a positive finding in such a way that they do not result in a significant restriction to subsistence use and a negative finding can be made. If a significant finding remains for any alternatives, there are two options: to deny the action, or to proceed with the Notice and Hearing requirement of ANILCA and approve the action once the final determinations have been made. If the decision to deny the action is made, then no further action under Section 810 is required.

If the decision is made by the Authorized Officer to select an alternative that has a positive finding, then a memorandum explaining the situation shall be prepared and submitted to the State Director (SD) for concurrence with the preliminary ANILCA Section 810 positive finding, and for authorization to proceed to the Notice and Hearings stage. Subsequently, actions as directed by the SD could include: 1) denial of the proposed action (i.e., an overturning of the decision by the AO); 2) concurrence with the finding, and direction to elevate the EA to an EIS as a result of the significant restriction; or 3) concurrence with the finding, and direction to proceed without elevating the EA to an EIS and to proceed with the Notice and Hearings stage. This decision will usually be made with input from the Solicitor’s Office. If authorization is given by the SD to proceed without elevating the EA to an EIS, the notice, hearings, and determination requirements must be fulfilled for the proposed action and alternatives (see Step 3 Notice and Hearings and Step 4 Final Determinations in **Section III Components of an 810 Evaluation for EISs, above**).

Contrary to the procedure that must be followed when an WEIS is being prepared, a finding of a significant restriction on subsistence uses in an EA for any alternative other than the selected alternative, including the cumulative case, is not sufficient to activate the notice, hearing and determination process required by ANILCA § 810(a)(3)(A), (B), and (C). However, if during the EA process multiple alternatives were proposed, and a different alternative that would significantly restrict subsistence uses is selected over the proposed action, the procedure outlined above must be followed for that alternative.

The Decision Record (DR) shall contain a section entitled 810 Summary that shall briefly summarize the evaluations, findings, and other actions taken under 810 for the selected alternative.

## **V. Components of an 810 Evaluation for NEPA CXs or DNAs**

An ANILCA 810 Evaluation is required for all land use actions, even if such action is covered by NEPA Categorical Exclusions (CXs) or Determinations of NEPA Adequacy (DNAs).

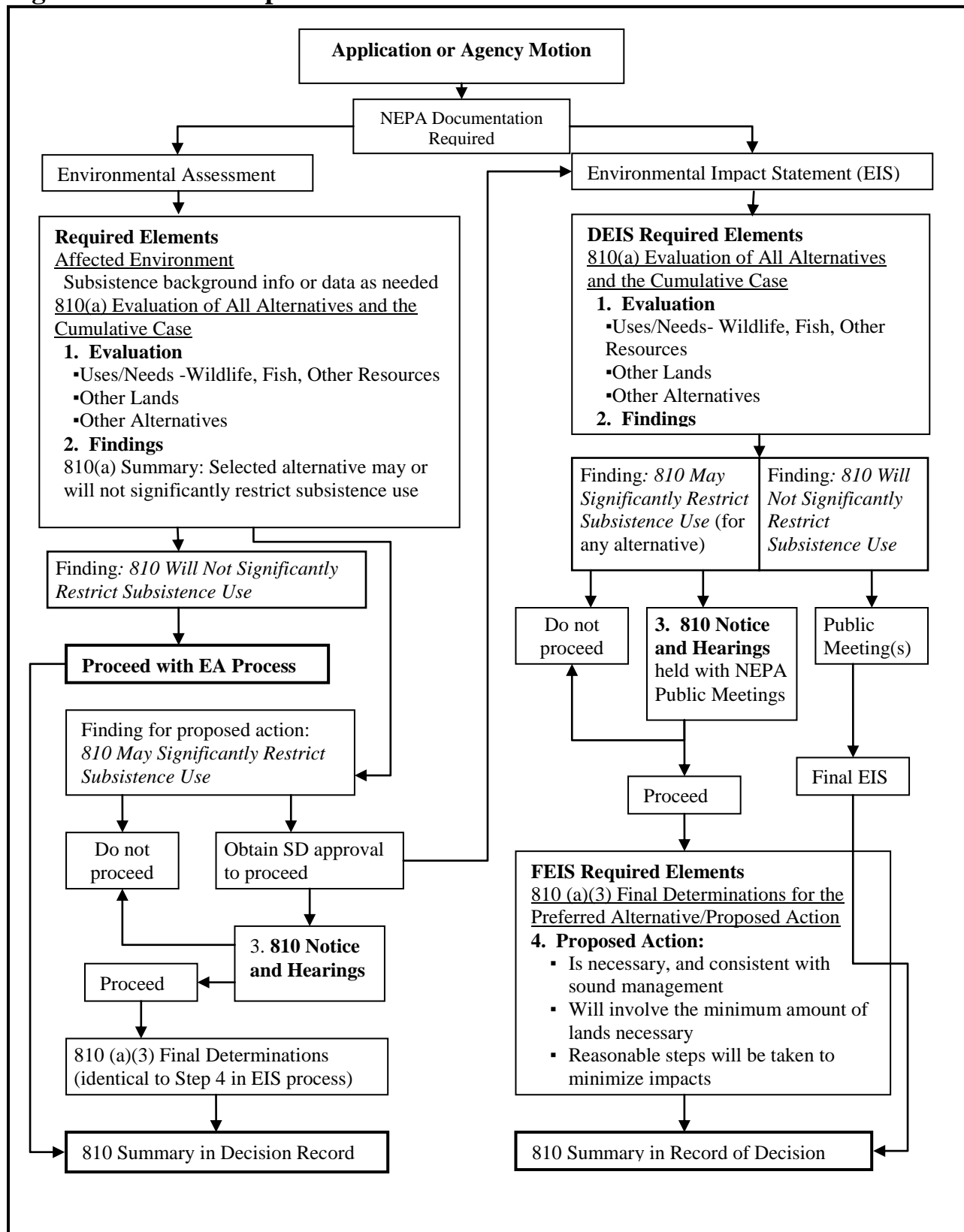
A NEPA CX is a category of actions that the DOI or BLM has determined do not significantly affect the quality of the human environment, and, therefore, do not require an EA or EIS under NEPA. DNAs are completed for actions which have already undergone a thorough environmental analysis, and for which an EA or EIS already exists.

According to BLM policy, there is no formal format or content requirements for CXs or DNAs although suggested formats are provided in H-1790-1, BLM NEPA Handbook. Formal documentation of these types of NEPA processes lacks discussion regarding impacts to resources. However, in the case of DNAs, this information may be located in the previously-created environmental document(s) that the DNA tiers from. Similarly, the ANILCA 810 Evaluation for the DNA should be modeled after the 810 Evaluation previously prepared and included in the already-existing environmental document(s).

Written Section 810 Evaluations for CXs and DNAs should be completed when the use of a CX or DNA is documented and must follow the process described under Steps 1 and 2, above, for EAs, and should include both an Evaluation and Findings section.



**Figure 1. Section 810 process for EISs and EAs.**



## **Appendix 1**

### **Title VIII, Section 810, Subsistence and Land Use Decisions**

§810. (a) In determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions, the head of the Federal agency having primary jurisdiction over such lands or his designee shall evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes. No such withdrawal, reservation, lease, permit, or other use, occupancy or disposition of such lands which would significantly restrict subsistence uses shall be effected until the head of such Federal agency--

(1) gives notice to the appropriate State agency and the appropriate local committees and regional councils established pursuant to §805;

(2) gives notice of, and holds, a hearing in the vicinity of the area involved; and

(3) determines that (A) such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the public lands, (B) the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition, and (C) reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.

(b) If the Secretary is required to prepare an environmental impact statement pursuant to §102(2)(C) of the National Environmental Policy Act, he shall provide the notice and hearing and include the findings required by subsection (a) as part of such environmental impact statement.

(c) Nothing herein shall be construed to prohibit or impair the ability of the State or any Native Corporation to make land selections and receive land conveyances pursuant to the Alaska Statehood Act or the Alaska Native Claims Settlement Act.

(d) After compliance with the procedural requirements of this section and other applicable law, the head of the appropriate Federal agency may manage or dispose of public lands under his primary jurisdiction for any of those uses or purposes authorized by this Act or other law.

**Appendix 2**  
**Exceptions to ANILCA 810 Evaluations**  
**Natural Fire and Fire Suppression**  
Compliance with ANILCA Section 810

ANILCA 810 applies when a Federal agency is attempting to withdraw, reserve, or lease public lands, or permit use. A decision in a planning document to suppress or not to suppress natural fire, or the implementation of that decision, is not a decision to withdraw, reserve, or lease public lands. Furthermore, no permits are issued, and natural fire is not, of itself, a use of land, but is an act of nature. A decision of whether or not to suppress a natural fire does not affect the legal permission to use the land.

Summary: The interagency planning for natural fire and fire suppression does not meet the threshold requirements to initiate a Section 810 Evaluation.

Note: Prescribed Burning **does** require a Section 810 Evaluation.

**Appendix 3**  
**Exceptions to ANILCA 810 Evaluations**  
**Evaluation of Permits for Subsistence Activities**  
Compliance with ANILCA Section 810

For the most part, Section 810 Evaluations are not required for subsistence activities. Federal Registration Permits issued by the BLM for federally-regulated subsistence hunting on public lands do **not** require a Section 810 Evaluation.

Land use permits are occasionally issued by the BLM for activities that are associated with or could be considered subsistence activities. For example, vegetation permits have been issued to rural residents for the gathering of firewood in areas of BLM managed lands where the resource has the potential to be adversely affected. Similarly, temporary use permits have been issued for cabins that are located on BLM lands along trap lines, and are used by trappers during the winter. However, an environmental review under NEPA must be accomplished before these permits are issued, and is usually an environmental assessment or DNA. Section 810 Evaluations are required for all EAs and DNAs.

## **Appendix 4**

### **Exceptions to ANILCA 810 Evaluations**

#### **3809 Surface Management of Mining**

#### **Compliance with ANILCA Section 810**

43 CFR Section 3809 contains the surface management procedures to be followed by the BLM with regard to actions that are carried out under existing mineral laws. The objectives of the 3809 regulations are to prevent unnecessary or undue degradation, provide protection of the non-mineral resources of the Federal lands, provide for reclamation, and provide for coordination with state agencies. The regulation defines three levels of activities: Casual Use that requires no permit; Notice-level Operations, which consist of a disturbance of five acres or less and is intended for exploration activities only; and Plan-level Operations, which are situations where more than five acres will be disturbed and mechanized mining will occur.

#### **Casual Use**

A Section 810 Evaluation is not required for casual use, which is defined as activities ordinarily resulting in no or negligible disturbance of the public lands or resources. For example, the collection of geochemical, rock, soil, or mineral specimens using hand tools; hand panning; or non-motorized sluicing. It may include use of small portable suction dredges, and also generally includes use of metal detectors, gold spears and other battery-operated devices for sensing the presence of minerals.

#### **Notice-level Operations**

Section 810 Evaluations are not required for Notice-level Operations, because these activities are allowed under existing mining laws, and are not at the discretion of the Authorized Officer to modify or prohibit. Notice-level Operations are currently defined in 3809.21 as exploration activities causing surface disturbance of five acres or less of public lands on which reclamation has not been completed, and are activities in which the claimant only needs to provide Notice to the BLM within 15 days of the start of their Operations. In Alaska, ongoing mining on five acres or less with mechanized equipment is treated as a Notice-level action—as long as the claimant does not allow their claim to lapse. If the claim lapses and the applicant applies for a new claim, then Notice can only be given for exploration, and all mechanized mining falls under Plan-level Operations.

#### **Plan-level Operations**

An 810 Evaluation shall be prepared on all Plan-level Operations, which are defined as all operations that are greater than casual use, and do not conform to the definition of Notice-level Operations. In Alaska, Plan-level Operations require an environmental review, and usually result in an EA or DNA. As such, the ANILCA 810 process outlined for these two types of environmental review, above, should be followed. In situations where a finding of “may significantly restrict” occurs, and the Plan of Operation cannot be modified to prevent the significant restriction, further guidance from the State Office is required. Plan-level Operations may require an EIS; and if this be the case, then the analyst should follow the guidance for preparing a Section 810 Evaluation for an EIS, above.

## **Appendix 5**

### **Guidance Concerning the Adequacy and Use of Data for Making 810 Evaluations**

#### **Compliance with ANILCA Section 810**

As specified in ANILCA, Section 810 Evaluations must be done with the best information that is available during the timeframe given to accomplish the evaluation. In the absence of information on subsistence activities and resources in the area of a proposed action, it must not be assumed that such activities and resources do not occur. Given the scope of the project and the need for adequate subsistence data, it may be possible to conduct an inventory of area and/or site specific subsistence uses, provided that funding and employee resources are available. However, it may be necessary to make an evaluation based on reasonable predictions of activities and resources for a given area, based on information from associated or similar areas located within the region.

The following<sup>2</sup> is a useful overview from the Office of Subsistence Management of some of the most readily available sources of information on subsistence use in Alaska.

*Ethnographic accounts and community studies:* Early ethnographic literature concerning Alaska Native cultures provides excellent descriptions of indigenous subsistence use patterns. However, some of the best ethnographies describing Alaska Native hunting and fishing patterns may describe hunting, fishing, and gathering activities that took place 50 to 100 years ago or longer. While these sources demonstrate the time depth of subsistence uses, they may not describe current use patterns. In addition, these ethnographic sources typically provide information on Alaska Native use of resources, and ANILCA refers to rural uses.

More contemporary sources include the large number of community and topical studies conducted to document subsistence uses and investigate the potential impact of Federal land use actions on subsistence uses. These sources include studies funded by Federal agencies preparatory to the passage of ANILCA, as well as environmental impact statements, and studies commissioned by the Bureau of Land Management and the Minerals Management Service in connection with Outer Continental Shelf leasing. Subsequent to the passage of the State subsistence law, the State ADF&G Division of Subsistence has been the lead organization in conducting subsistence field studies, although regional Native organizations and tribes also have undertaken subsistence fieldwork. The State Division of Subsistence technical paper series includes about 300 titles and covers community and topical studies throughout Alaska. While they are key sources of information for subsistence analyses, community studies are not available for all of the State's rural communities. For communities that have not been studied, staff anthropologists typically generalize from what has been collected from near-by communities.

*Mapped data:* In addition to providing contemporary subsistence ethnography, the Division of Subsistence and others have mapped where community subsistence uses occur. Mapping methodologies, developed in the early 1980s, have been applied throughout Alaska, although mapping has not occurred in all rural communities. These mapped data can provide an approximation of the extent and intensity of subsistence uses. However, mapped data have been

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<sup>2</sup> Excerpt from: *Office of Subsistence Management, Issues and Points to Consider in Writing Customary and Traditional Use Determination Analyses, Draft prepared April 28, 2005.*

collected using varying methodologies, so that data may not be comparable across all communities and areas. In addition, mapped data have a static quality and may be dated for certain species. For example, the Western Arctic Herd caribou population has been at an all-time high, and mapping of current subsistence use areas might not be consistent with mapping done twenty years ago or in the future.

**Household harvest survey data and ADF&G harvest reports:** Two main published or gray literature sources for subsistence harvest data exist: 1) household harvest survey data and 2) ADF&G harvest ticket reports. The Division of Subsistence developed household harvest survey methodologies in the early 1980s. The Division uses a random face-to-face survey methodology to gather retrospective harvest data in study communities; resulting data provide an estimate of the household, per capita, and community harvest levels for all fish, wildlife, and plant species taken in the year prior to survey administration. Raw harvest data are converted into ‘food weight’ to allow inter-community and inter-regional comparability of data. Summaries of the Division of Subsistence household harvest survey data are available via the Internet using the Community Profile Data Base (<http://www.subsistence.adfg.state.ak.us/geninfo/publctns/cpdb.cfm>).

Household harvest surveys have not been undertaken in all communities, nor are they repeated on an annual basis. Sometimes harvest surveys are only conducted one year. In addition, they are often dated and may not accurately reflect current harvest levels. While overall harvest quantity of all species, as expressed in per capita food weight, tends to remain constant from year to year, harvest composition tends to be dynamic and variable across years. As a result, one year of harvest information may not accurately capture and reflect the inherent variability in subsistence systems.

In addition to survey data, fish and wildlife harvest information are collected from State harvest tickets and State and Federal permits by ADF&G and the USFWS as part of their management programs. These data provide annual estimates of the harvest of certain fish and wildlife species. They are useful in tracking reported harvest of resources such as salmon, brown and black bear, deer, moose, goat, caribou, sheep and muskox. However, because many rural residents do not participate in the voluntary or mandatory reporting, these data may not accurately report the actual harvests of rural communities. This problem may be most acute with certain species and certain areas of the state where seasons, harvest limits, and reporting requirements are not reflective of local subsistence harvest and use practices. Another limitation of this source is that a small number of communities don’t have post offices. In these cases these communities are lumped with communities that have post offices, resulting in grouping or “lumping” of the data.

**Nonpublished sources:** Nonpublished sources of information on subsistence use includes testimony presented and discussion occurring at regional advisory council meetings, as well as information provided by knowledgeable individuals, management professionals, and others. These sources need to be cited appropriately in the evaluation.

## **Appendix 6**

### **Significance**

#### Compliance with ANILCA Section 810

After the passage of ANILCA in 1980, several ambiguous concepts with regard to subsistence management were identified as needing further clarification. High among this list was the direction in Section 810 that “no such withdrawal, reservation, lease, permit, or other use, occupancy or disposition of such lands *which would significantly restrict subsistence uses* shall be effected until...” At question was both what defined a “restriction to subsistence use,” and at what threshold this restriction would be considered “significant.”

The following materials, extracted from the court’s decisions in the first ANILCA-related lawsuit, set the parameters and provided guidelines for a determination of significant restriction on subsistence uses. While over 25 years old, the decisions quoted below remain the foundation for determining a finding of “may significantly restrict subsistence” for most federal agencies in Alaska.

Quoting from the decision by Judge Fitzgerald<sup>3</sup> with regard to what constitutes a legally acceptable agency definition of the phrase ‘significant restriction upon subsistence uses’:

At this juncture I note that Section 810(a) does not define or interpret the phrase “significant restriction upon subsistence uses.” The Alaska Director has provided a definition of the term “significant restriction of subsistence uses,” as used in Section 810(a), and the plaintiffs do not seriously dispute the validity of that definition. Furthermore, since the Director is the government official charged with the responsibility of complying with Section 810(a), I must defer to his interpretation of the statute provided that it is consistent with and in furtherance of the purposes and policies of the legislation...

The Director has defined “significant restriction of subsistence uses” as (1) a reduction in the availability of harvestable resources caused by decline in the population of subsistence resources; (2) a reduction in the availability of resources, caused by an alteration of their distribution or location throughout the National Petroleum Reserve-Alaska; or (3) the limitation of access by subsistence harvesters.

Significant restrictions are differentiated from insignificant restrictions by a process assessing whether the action undertaken will have no or a slight effect as opposed to large or substantial effects. In further explanation the Director states that no significant restriction results when there would be “no or a slight” reduction in the amount of harvestable resources and no “occasional” redistribution of these resources.

There would be no effect (or slight inconvenience) on the ability of harvesters to reach and use active subsistence harvesting sites; and there would be no substantial increase in competition for harvestable resources (that is, no substantial increase in hunting by oilfield workers or Outsiders using roads to the oil fields).

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<sup>3</sup> from Kunaknana et al. vs. Watt, December 20, 1983, Decision of Record (NPR-A Lease Sale), pages 41 and 42

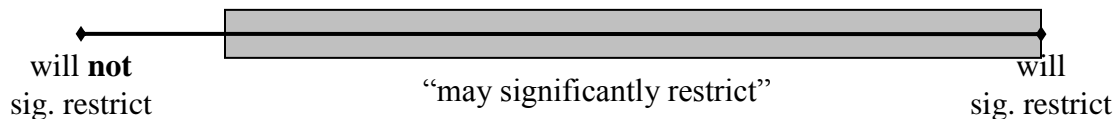


Conversely, restrictions for subsistence uses would be significant if there are large reductions in the abundance or major distribution of these resources, substantial interference with harvestable access to active subsistence sites or major increases in non-rural resident hunting.

In light of this definition the determination of significant restriction must be made on a reasonable basis, since it must be decided in light of the total subsistence lands and resources that are available to individuals in surrounding areas living a subsistence lifestyle.

Following this example, first a restriction is identified, then the magnitude of the restriction is evaluated. *Kunaknana et al. vs. Clark*, the appeal to the Ninth Circuit Court of the same case, further affirms the above definition, and also sets the precedence for what is termed the “may” threshold. The Opinion filed September 12, 1984 states: “first, the agency determines whether the contemplated action may significantly restrict subsistence use; if it may, the agency must comply with the notice and hearings procedures.” It is because of this Opinion that the ANILCA 810 findings are stated as “will not significantly restrict” or “may significantly restrict.”

The “may” threshold as used by the BLM can be characterized as a continuum, in which one end is “will not significantly restrict” and the other is “will significantly restrict,” with may falling somewhere in between.



While it may seem that the gray area of “may significantly restrict” is ambiguous, it serves the purpose of allowing the analyst to evaluate the particular proposed action and alternatives to the particular subsistence uses of a given area. For example, the analyst may wish to use the following strategy: First, identify the potential impact(s) resulting from the proposed action that may lead to one of the three restrictions defined by case law, above (e.g., a reduction due to decline in resource population; a reduction due to alteration of resource distribution; or a limitation to access by subsistence users). Then, assess the significance of the impact in the context of the following factors<sup>4</sup>:

- Magnitude of the impact (how much)
- Duration or frequency of the impact (how long or how often)
- Extent of the impact (how far)
- Likelihood of the impact occurring (probability)
- Intensity of the impact (e.g., unique setting, unprecedented impacts, uncertain impacts, controversial nature of the impact)

Ultimately, it is up to the analyst to make the determination using the best information available. If you are struggling with whether or not the identified impacts resulting from the proposed action are significant enough for a positive finding of “may significantly restrict,” it is always

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<sup>4</sup> Example of significance criteria defined by the US Forest Service Rural Utilities Service, Jackson County Lake Project Final Environmental Impact Statement, 2001, Appendix C, pages C-3 to C-4.

best to err on the side of protection. One must remember that the intent of Title VIII of ANILCA is to protect subsistence use, and that the Section 810 process has the ultimate goal of identifying ways in which impacts to subsistence can be minimized through the Notice and Hearings process. Lastly, whatever the final determination, adequate discussion must be contained within the Section 810 Evaluation to support the findings, so that the public can adequately review the findings and provide input during the DEIS meeting(s) or the ANILCA Hearing(s), if required.

## **Appendix 7**

### **Notice and Public Hearings**

#### **Compliance with ANILCA Section 810**

Notice and hearing(s) are required if any alternative in an EIS, including the cumulative case, is found to have a significant restriction on subsistence uses. The notice and hearing requirements of Section 810 shall be combined with the EIS process. When an EIS is being prepared, **Notice** consists of four official actions, all of which must be accomplished before the hearing(s) in the affected community(s), and before the end of the comment period for the DEIS.

1. For EISs, Federal Register Publication of the ANILCA 810 Findings, and, if available, the date(s) and location(s) of all hearings—this should be included within the Notice of Availability of the related DEIS.
2. Give notice by way of letter to the Commissioner of the Alaska Department of Fish and Game;
3. Give notice by way of letter to the Chairperson of the appropriate Regional Advisory Council(s); and
4. Give notice by way of media (i.e., newspapers, radio) or other appropriate means (i.e., flyers, newsletters to boxholders) to communities in the vicinity of where the ANILCA 810 Hearing(s) will be held.

Notice must be given in advance of the hearing, and should be no less than 15 days prior to the hearing (43 CFR 1610.2). Comments regarding the ANILCA 810 findings should be accepted for the duration of the public comment period.

Notice and hearing(s) are required for an EA only if the selected alternative is found to have a significant restriction to subsistence use, and the Authorized Officer, in consultation with State Director, would like to approve the action. **Notice** in this situation consists of the listed official actions 2 through 4 above, all of which must be accomplished before the hearing(s) in the affected community(s), and before the end of a comment period that might have been established for the EA. Notice must be given in advance of the hearing, and should be no less than 15 days prior to the hearing

**810 Hearings** must be held in the vicinity of the area involved and should be held concurrently with DEIS Public Meetings (if applicable and if scheduled). The purpose of the hearing should be explicitly stated to those in attendance at the meeting/hearing that the purpose of being there is twofold: 1) to receive comments on the DEIS (if applicable); and 2) to present the findings of the ANILCA 810 Evaluation, and receive input from subsistence users on ways to help mitigate impacts. Note that a hearing not identified as a Section 810 public hearing will not fulfill the legal requirements of ANILCA Section 810.

A summary of the ANILCA Section 810 Findings and rationale should be presented prior to opening the hearing for public comments/testimony. Time should also be allotted for questions and answers, especially concerning the proposed action or the ANILCA Section 810 Findings. The summary and the Q&A need not be recorded. However, a statement regarding the purpose of the hearing, including the hearing process, must be read into the record, and then the floor

opened to comments/testimony from the audience. It is very important for this portion of the hearing to be recorded in its entirety, especially if the Section 810 analyst is not present.

Frequently, comments at hearings are limited to a set amount of time, such as 3 minutes or 5 minutes, especially if there are a large number of individuals wanting to testify. All Alaska Native cultures are oral-traditional, meaning that the spoken word is held in high regard, and that it is through telling that information is transmitted from generation to generation. As a result, it may be very difficult for individuals to condense their concerns, potential mitigation measures, and other relevant knowledge into a set time period of mere minutes. One solution to this is to let everyone speak within the set time period, and then reopen the hearing to those who would like to add to their previous comments.

Other hearings issues to consider:

- A translator should be provided if the community is bilingual.
- Refreshments are a common courtesy, and denote respect and thanks to the community for their hospitality.
- Having an “Open House” before the hearing is an effective way to share information about the proposed action and ANILCA Section 810 Findings in an informal and unhurried way.
- Although the Authorized Officer has the option of not proceeding with the proposed action as a result of testimony from subsistence users, it is important to stress at the hearing(s) that a primary purpose of the hearing is to elicit mitigation measures or other suggestions/recommendations that could be incorporated to minimize or eliminate impacts to subsistence use.
- Handouts, large-format maps, and any other pertinent information should be made available for community participants.

## **Appendix 8**

### **Example of an 810 Evaluation for an EIS**

#### **Compliance with ANILCA Section 810**

The following is a modified version of the Section 810 Evaluation for the Northeast National Petroleum Reserve-Alaska Final Amended Integrated Activity Plan/Environmental Impact Statement (2008).

### **ANILCA § 810 EVALUATION OF SUBSISTENCE IMPACTS**

In 2000, the President created the National Energy Policy Development Group (NEPDG), consisting of the Vice-President and other key cabinet members. The primary task of the group was to “develop a national energy policy designed to help the private sector, and, as necessary and appropriate, state and local governments, and promote dependable, affordable, and environmentally sound production and distribution of energy for the future” (NEPDG 2001). In May 2001, The NEPDG released the National Energy Policy report, a comprehensive list of findings and key recommendations that were adopted and implemented by the President, and that form the basis of the President’s National Energy Policy. Specifically, the policy directs the Secretary of the Interior to “consider additional environmentally responsible oil and gas development, based on sound science and the best available technology, through further lease sales in the National Petroleum Reserve – Alaska,” and that “such consideration should include areas not currently leased within the northeast corner of the National Petroleum Reserve – Alaska.” To this end, the Bureau of Land Management (BLM) initiated a process to amend the current Integrated Activity Plan for the Northeast Planning Area of the National Petroleum Reserve – Alaska.

Chapters 3 (Affected Environment) and 4 (Environmental Consequences) of the Northeast National Petroleum Reserve-Alaska Amended Integrated Activity Plan/Environmental Impact Statement (Amended IAP/EIS) provide a detailed description of both the affected environment of the Planning Area and the potential adverse effects of the various alternatives to subsistence. This appendix uses the detailed information presented in the Amended IAP/EIS to evaluate the potential impacts to subsistence pursuant to Section 810(a) of the Alaska National Interest Land Conservation Act (ANILCA).

#### **Subsistence Evaluation Factors**

Section 810(a) of ANILCA requires that an evaluation of subsistence uses and needs be completed for any federal determination to “withdraw, reserve, lease, or otherwise permit the use, occupancy or disposition of public lands.” As such, an evaluation of potential impacts to subsistence under ANILCA § 810(a) must be completed for the Amended IAP/EIS. ANILCA requires that this evaluation include findings on three specific issues:

- The effect of use, occupancy, or disposition on subsistence uses and needs;
- The availability of other lands for the purpose sought to be achieved; and
- Other alternatives that would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes (16 USC § 3120).

The evaluation and findings required by ANILCA § 810 are set out for each of the three alternatives considered in the Amended IAP/EIS.

A finding that the proposed action may significantly restrict subsistence uses imposes additional requirements, including provisions for notices to the State of Alaska and appropriate regional and local subsistence committees, a hearing in the vicinity of the area involved, and the making of the following determinations, as required by Section 810(a)(3):

- Such a significant restriction of subsistence uses is necessary, and consistent with sound management principles for the utilization of the public lands;
- The proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of use, occupancy, or other disposition; and

- Reasonable steps will be taken to minimize adverse effects upon subsistence uses and resources resulting from such actions.

To determine if a significant restriction of subsistence uses and needs may result from any one of the alternatives discussed in the Amended IAP/EIS, including their cumulative effects, the following three factors in particular are considered:

- The reduction in the availability of subsistence resources caused by a decline in the population or amount of harvestable resources;
- Reductions in the availability of resources used for subsistence purposes caused by alteration of their normal locations and distribution patterns; and
- Limitations on access to subsistence resources, including from increased competition for the resources.

A significant restriction to subsistence may occur in at least two instances: 1) when an action substantially reduces populations or their availability to subsistence users, and 2) when an action substantially limits access by subsistence users to resources. Chapter 3 (Affected Environment) of the Amended IAP/EIS provides information on areas and resources important for subsistence use, and the degree of dependence of affected villages on different subsistence populations. Chapter 4 (Environmental Consequences) provides much of the data on levels of reductions and limitations under each alternative, which was used to determine whether the action would cause a significant restriction to subsistence. The information contained in the Amended IAP/EIS is the primary data used in this analysis.

A subsistence evaluation and findings under ANILCA § 810 must also include a Cumulative Impacts analysis. Section B.2, below, begins with evaluations and findings for each of the three alternatives discussed in the Amended IAP/EIS. Finally, the most intensive cumulative case, as discussed in Chapter 4 (Environmental Consequences) of the Amended IAP/EIS, is evaluated. This approach helps the reader to separate the subsistence restrictions that would potentially be caused by activities proposed under the three alternatives from those that would potentially be caused by past, present, and future activities that could occur, or have already occurred, in the surrounding area.

When analyzing the effects of the four alternatives, particular attention is paid to those communities who have the potential to be most directly impacted by the proposed actions—Anaktuvuk Pass, Atkasuk, Barrow and Nuiqsut. These communities are located within or adjacent to the Northeast Planning Area, and are the same villages that were identified and analyzed during the 1998 planning process, which the current plan is amending. The cumulative case expands the analysis to include the entire North Slope, including indirect effects to communities located in other areas of the state (i.e., the Yukon-Kuskokwim Delta), to assess any impacts to subsistence that may result because of negative effects to migratory subsistence species.

In addition to ANILCA, Environmental Justice, as defined in Executive Order 12898, also calls for an analysis of the effects of federal actions on minority populations with regard to subsistence. Specifically, Environmental Justice is:

The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people, including racial, ethnic, or socioeconomic group should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.

Section 4-4 of Executive Order 12898, regarding the Subsistence Consumption of Fish and Wildlife, requires federal agencies to collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence, and to communicate to the public any risks associated with the consumption patterns. To this end, the subsistence analyses of all alternatives, located in Chapter 4 (Environmental Consequences) of the Amended IAP/EIS, have been reviewed and found to comply with Environmental Justice.

## **ANILCA § 810(a) Evaluations and Findings for All Alternatives and the Cumulative Case**

The following evaluations are based on information relating to the environmental and subsistence consequences of alternatives A through D, and the cumulative case as presented in Chapter 4 (Environmental Consequences) of the Amended IAP/EIS. The stipulations discussed in Chapter 2 (Alternatives) of the Amended IAP/EIS are also considered for the alternatives to which they apply. The evaluations and findings focus on potential impacts to the subsistence resources themselves, as well as access to resources, and economic and cultural issues that relate to subsistence use.

### **Evaluation and Findings for Alternative A (No Action Alternative)**

Alternative A of the Amended IAP/EIS is the No Action Alternative. Selection of this alternative would result in continued management of the Northeast National Petroleum Reserve – Alaska as specified in the 1998 Northeast National Petroleum Reserve – Alaska IAP/EIS Record of Decision (ROD; 1998 Northeast IAP/EIS ROD). In effect, the No Action Alternative is the preferred alternative from the previous 1998 EIS, and as such, a subsistence evaluation as required by ANILCA § 810 has already been completed. The evaluation and findings presented here reaffirm the previous conclusion that impacts to subsistence as a result of this alternative would be minimal.

### **Evaluation of the Effect of Use, Occupancy, or Disposition on Subsistence Uses and Needs**

Under the No Action Alternative, 13 percent of the Planning Area would remain unavailable (87 percent available) for oil and gas leasing, including much of the Teshekpuk Lake Special Area, and important waterfowl and caribou habitat. All of the special areas and site-specific prohibitions, as well as the 79 stipulations defined in the ROD, would remain in effect.

The analysis of the No Action Alternative on subsistence presented in Section 4.3.12 (No Action Alternative, Subsistence) considers the effects of non-oil and gas activities, the effects of oil and gas activities, the effects of oil spills, and the effectiveness of the stipulations and required operating procedures (ROPs) required by the BLM, as discussed in the 1998 Northeast IAP/EIS ROD. The analysis concludes that the No Action Alternative would have a negligible effect on subsistence species and on access to subsistence resources, and that mitigation measures developed by the BLM in conjunction with local communities would serve to minimize, to the extent possible, impacts to subsistence use by the communities of Anaktuvuk Pass, Nuiqsut, Atkasuk, or Barrow.

Effects to subsistence resources by non-oil and gas activities consist primarily of those actions associated with research. Numerous studies are conducted on a year-round basis on the North Slope, including aerial surveys by fixed-wing aircraft or helicopter, or ground surveys on foot or by off-highway vehicle (OHV), all of which have the potential to disturb animals. The most frequent complaint voiced by local subsistence users is that a large amount of aerial disturbance to animals occurs each field season in conjunction with scientific studies (Subsistence Advisory Panel [SAP] Minutes, June 6, 2002 meeting; SAP Minutes, August 22, 2002 meeting). Many of the scientific studies that currently occur are a result of stipulations imposed on oil and gas activities in the Planning Area; however, these same mandatory stipulations serve to minimize the potential effects of conducting research. Based on the analysis presented in Chapter 4 (Environmental Consequences), the effects of non-oil and gas activities on the species utilized by subsistence users is expected to be localized and short-term, and to have no regional population effects.

Oil and gas-related activities allowed under the No Action Alternative include seismic exploration, exploratory drilling, and development/production. Each of these activities has the potential to displace animals, with exploration potentially causing temporary displacement in the area of activity, and development/production potentially causing multi-year displacement during construction and until the animal becomes habituated to the resultant infrastructure. Access by subsistence users could be impacted if the animals they wish to hunt have been displaced to areas much farther from their normal hunting grounds. However, many of the stipulations in the 1998 ROD would minimize the effects of oil and gas activities on animal populations, their range, and access to hunting areas by subsistence users (see Section 4.3.12.3, Effectiveness of Stipulations and Required Operating Procedures).

Oil spills have the potential to impact subsistence species as well as subsistence harvest patterns, depending on the amount and the location of the spill. Small spills are unlikely to cause great damage, especially if contained on land. Large spills are unlikely to occur during the exploration phase of oil development, but could occur once production infrastructure and facilities were in place. Several stipulations pertaining to spills and spill response are included

under the No Action Alternative, which serve to reduce the potential impacts of oil spills to subsistence species and use.

As stated in Section 4.3.13.4 (Sociocultural Systems, Conclusion), the 1998 Northeast IAP/EIS ROD was the result of several years of collaboration between the communities near the Planning Area, local governments and agencies, and the BLM. The stipulations comprise essential protections for subsistence resources, cabins, camps, and river corridors, and also define the system of conflict negotiation to be used by permittees, leaseholders, subsistence users, and the BLM. Residents living on the North Slope, especially those in the village of Nuiqsut, view the 1998 stipulations, river setbacks, and designated special areas as a negotiated compromise between the Iñupiat people, the federal government, and the oil industry. Retention of the 1998 Northeast IAP/EIS ROD is favored by many individuals, local agencies, and local governments, as the 1998 Northeast IAP/EIS ROD is viewed as an effective plan that allows for oil and gas activity and the Iñupiat way of life to effectively coexist (ENSR 2004 *Public Scoping Summary Report for the Amendment to the National Petroleum Reserve – Alaska Integrated Activity Plan/Environmental Impact Statement*).

### **Evaluation of the Availability of Other Lands for Oil and Gas Exploration and Development**

The Naval Petroleum Reserves Production Act of 1976 (NPRPA), as amended, gave the Secretary of the Interior the authority to conduct oil and gas leasing in the Northeast National Petroleum Reserve – Alaska. However, the law prohibited petroleum production from occurring in the National Petroleum Reserve – Alaska until authorized by Congress. In 1980, Congress granted that authorization and directed the Secretary of the Interior to undertake a program of competitive leasing of potential oil and gas tracts in the Reserve. The President’s energy policy directs the Secretary of the Interior to “consider additional environmentally responsible oil and gas development, based on sound science and the best available technology, through further lease sales in the National Petroleum Reserve – Alaska.” The BLM is undertaking this Amended IAP/EIS to fulfill the mandates of the President’s energy policy as well as the BLM’s responsibilities to manage these lands under authority of the two laws above and other authorities cited elsewhere in this EIS. The No Action Alternative would continue the authorization of oil and gas exploration or development activities in the Northeast National Petroleum Reserve – Alaska under the 1998 Northeast IAP/EIS ROD. Other lands managed by the BLM are either too remote for economically viable oil and gas production, or have a low probability of containing sufficient quantities of oil or gas. State and Native Corporation Lands cannot be considered in a BLM plan, and under BLM policy other BLM lands outside of Alaska are not considered under ANILCA.

### **Evaluation of Other Alternatives that would Reduce or Eliminate the Use, Occupancy, or Disposition of Public Lands Needed for Subsistence Purposes**

Alternatives that would reduce or eliminate the use of public lands needed for subsistence include: 1) making more land in the Northeast National Petroleum Reserve – Alaska unavailable for oil and gas leasing, or 2) not allowing oil and gas activity to occur. Unfortunately, neither of these alternatives is viable, given the fact that Congress created the Northeast National Petroleum Reserve – Alaska as a petroleum reserve, with specific legislation that delineates its purpose and proposed use. Removing or changing its designation as a petroleum reserve would require another act of Congress. Additionally, the 1998 Northeast IAP/EIS ROD allowed the BLM to enter into contracts with several oil companies, by leasing land for oil and gas exploration. All of these leases are still in effect, and will not expire until 2008. Finally, the Secretary of the Interior has directed the BLM to look into additional lands in the Northeast National Petroleum Reserve – Alaska that may be made available for environmentally sound oil and gas leasing. Reducing the number of acres available for energy development would contradict this direction, and would go against the President’s stated National Energy Policy. Section 2.4 (Alternatives Considered but Eliminated from Detailed Analysis) of the Amended IAP/EIS discusses other alternatives that were considered, but eliminated from detailed analysis.

### **Findings**

The No Action Alternative would not significantly restricting subsistence uses and needs. The impacts to subsistence resources and access discussed above would be minimal, or would be adequately mitigated by special area designation and stipulations under which the lessee/permittee must operate. This finding applies to Anaktuvuk Pass, Atkasuk, Barrow, and Nuiqsut.



## **Evaluation and Findings for Alternative B**

Alternative B, as well as the stipulations and ROPs accompanying it, takes into consideration all comments and concerns generated during the scoping process for the amendment, as well as the stated direction from the Secretary of the Interior to look at lands previously unavailable for leasing in the Planning Area. Alternative B of the Amended IAP/EIS makes 95.4 percent of all lands within the Planning Area available for oil and gas leasing, which includes approximately 387,000 acres that were formerly off-limits to leasing, including Teshekpuk Lake and lands north and east of the lake.

## **Evaluation of the Effect of Use, Occupancy, or Disposition on Subsistence Uses and Needs**

The analysis of Alternative B on subsistence is presented in Section 4.4.12 (Alternative B, Subsistence). This analysis considers the effects of non-oil and gas activities, the effects of oil and gas activities, the effects of oil spills, and the effectiveness of the associated stipulations and ROPs as presented by the BLM. The analysis concludes that the effect of Alternative B would be greater than that of the No Action Alternative, but would remain localized and would not significantly affect subsistence species, access to subsistence resources, or subsistence use by the communities of Anaktuvuk Pass, Nuiqsut, Atkasuk, or Barrow.

At issue in this evaluation are the differences between the No Action Alternative and Alternative B, and whether these differences would be significant enough to cause a substantial impact to the populations of subsistence species, to displace these species from their current habitat, or to limit access to current, traditional hunting areas by subsistence users under Alternative B. Alternative B would primarily be different from the No Action Alternative in the following regards:

- Performance-based stipulations and ROPs would replace the 79 prescriptive stipulations in the 1998 Northeast IAP/EIS ROD. Stipulations refer to requirements that the leaseholder must comply with and are attached to the lease document, whereas ROPs are requirements that any operator working in the Northeast National Petroleum Reserve – Alaska must follow, and are attached to permits for activity.
- Some of the 79 stipulations from the 1998 Northeast IAP/EIS ROD that are already required by existing regulation or law would not have a corresponding stipulation or ROP under Alternative B. This does not mean that the lessee or permittee would be able to ignore the actions/activities covered by the original stipulations, only that these actions/activities would be covered by law or regulation, and, therefore, MUST be followed. This approach would actually serve to strengthen the intent, in that lessees/permittees would not mistakenly believe that they could be granted an exception to the stipulation using the BLM exception process.
- An additional 387,000 acres located in the Teshekpuk Lake Special Area would be available for oil and gas leasing. However, within these additional acres, no permanent oil and gas facilities would be allowed within ¼ mile of the shore of identified goose-molting lakes, or within ¾ mile of the coast. Approximately 213,000 acres located in the goose molting/caribou habitat use area northeast of Teshekpuk Lake would remain unavailable for oil and gas leasing.
- Surface activity, including exploratory and delineation wells, would be allowed within the former “No Surface Activity” zone south of Teshekpuk Lake. However, the construction of permanent facilities would not be allowed until the lessee has conducted a study that includes a minimum of 3 year’s worth of data on caribou movements.
- “Sensitive Area Consultation” zones from the 1998 Northeast IAP/EIS ROD would be replaced by ROP H-1, which requires consultation with the North Slope Borough (NSB), the Subsistence Advisory Panel, and affected communities, regardless of where the activity would take place.
- Permanent oil and gas facilities would not be allowed within ¼ mile of lakes identified as “Deep Water Lakes.” The 1998 Northeast IAP/EIS ROD did not allow permanent facilities within ¼ mile of fish-bearing lakes in a large area south of Teshekpuk Lake, but each individual lake was not specifically identified.

Of the differences between alternatives A and B, only two would potentially cause Alternative B to substantially affect subsistence resources or their use: the availability of additional land for oil and gas leasing from within the Teshekpuk Lake Special Area, and the removal of the “No Surface Occupancy” zone south of Teshekpuk Lake.

Other changes, such as updating the stipulations to conform to an adaptive management approach, would not reduce the level of protection afforded, as the ROPs would still specify the parameters by which the lessee/permittee would operate.

It is expected that impacts to terrestrial mammals and subsistence use in the vicinity of Teshekpuk Lake would be greater under Alternative B than under the No Action Alternative, particularly with respect to caribou calving and insect-relief habitat, given the additional 387,000 acres that would be available for oil and gas leasing. However, the 213,000 acres that would be unavailable to leasing are important to caribou migrating between calving and insect-relief areas and the wintering grounds. This area, as well as the stipulations that have been developed to further protect caribou found near Teshekpuk Lake, would serve to protect the resource from substantial decline at the population level (see Sections 4.4.9.1, Terrestrial Mammals, and 4.4.12.2, Subsistence, Oil and Gas Exploration and Development Activities). Impacts to vegetation, fish, birds, and other resources used for subsistence purposes are expected to be minor (see Sections 4.4.5, Vegetation; 4.4.7, Fish; 4.4.8, Birds; and 4.4.9, Mammals).

Under Alternative B, the greatest potential impact to subsistence use would be the removal of the “No Surface Activity” zone, which extends from the west side to the east side of the Planning Area in a band south of Teshekpuk Lake. Comments received during the scoping process for this amendment stressed the importance of protecting essential caribou movement/migration corridors, located both to the east and the west of Teshekpuk Lake. The construction of permanent facilities, such as pipelines, roads, and production pads, within these narrow corridors could result in displacement of the Teshekpuk Lake Caribou herd, if the caribou were unable to get to their known insect-relief habitat during periods of intense insect harassment. Furthermore, removal of the “No Surface Activity” zone, in addition to opening more lands for leasing, would allow permanent facilities to be constructed within much of the Teshekpuk Lake Herd calving area. While such construction might not affect the population of the herd, it could result in a dramatic shift in the current use-area of the caribou, resulting in displacement of the herd. Stipulation K-5 would serve to minimize the potential disturbance to caribou by requiring a three-year study of caribou movements in the vicinity of the facility, before the BLM will authorize construction.

In addition to the potential displacement of subsistence resources under Alternative B, the elimination of the “No Surface Activity” zone, as well as the additional acres available for leasing, could result in future infrastructure such as pipelines, roads, production pads, and wells. Oil industry infrastructure on the east side of the Colville River has resulted in the nonuse of this area by the residents of Nuiqsut, who do not feel comfortable hunting near or around oil developments. If enough economically recoverable oil was discovered to warrant additional development in the Nuiqsut, Atkasuk, or Barrow traditional subsistence use areas, hunters could avoid the development. The result would be an overall reduction in lands used for subsistence purposes. Effective communication and consultation by the oil industry, local communities, and the BLM would be essential when, and if, development were to occur in the National Petroleum Reserve – Alaska. Required Operating Procedures H-1 and H-2 would be the primary mitigation measures in place to ensure adequate access to traditional hunting areas by the residents of Nuiqsut, Barrow, and Atkasuk in the Teshekpuk Lake Special Area.

As stated in the evaluation for the No Action Alternative, residents living on the North Slope, especially those in the village of Nuiqsut, view the 1998 Northeast IAP/EIS ROD as a negotiated compromise between the Iñupiat people, the federal government, and the oil industry. Considerable changes to the decisions in the 1998 Northeast IAP/EIS ROD, without the consensus of local communities, governments, and agencies, could create an insurmountable rift between the people of the North Slope and the federal government, especially if their Iñupiat way of life was threatened.

### **Evaluation of the Availability of Other Lands for Oil and Gas Exploration and Development**

The NPRPA, as amended, gives the Secretary of the Interior the authority to conduct oil and gas leasing in the National Petroleum Reserve – Alaska. However, the law prohibited petroleum production from occurring in the National Petroleum Reserve – Alaska until authorized by Congress. In 1980, Congress granted that authorization and directed the Secretary of the Interior to undertake a program of competitive leasing of potential oil and gas tracts in the Reserve. The President’s energy policy directs the Secretary of the Interior to “consider additional environmentally responsible oil and gas development, based on sound science and the best available technology, through further lease sales in the National Petroleum Reserve – Alaska.” The BLM is undertaking this Amended

IAP/EIS to fulfill the mandates of the President's energy policy, as well as the BLM's responsibilities to manage these lands under authority of the two laws above and other authorities cited elsewhere in this Amended IAP/EIS. Alternative B would continue the authorization of oil and gas exploration or development activities in the National Petroleum Reserve – Alaska under performance-based stipulations identified in Section 2.6 (Stipulations and Required Operating Procedures) of the Amended IAP/EIS. Other lands managed by the BLM are either too remote for economically viable oil and gas production, or have a low probability of containing sufficient quantities of oil or gas. State and Native Corporation Lands cannot be considered in a BLM plan, and under BLM policy other BLM lands outside of Alaska are not considered under ANILCA.

### **Evaluation of Other Alternatives that would Reduce or Eliminate the Use, Occupancy, or Disposition of Public Lands Needed for Subsistence Purposes**

Alternatives that would reduce or eliminate the use of public lands needed for subsistence include: 1) making more land in the Northeast National Petroleum Reserve – Alaska unavailable for oil and gas leasing, or 2) not allowing oil and gas activity to occur. Unfortunately, neither of these alternatives is viable, given the fact that Congress created the National Petroleum Reserve – Alaska as a petroleum reserve, with specific legislation that delineates its purpose and proposed use. Removing or changing its designation as a petroleum reserve would require another act of Congress. Additionally, the 1998 Northeast IAP/EIS ROD allowed the BLM to enter into contracts with several oil companies, by leasing land for oil and gas exploration. All of these leases are still in effect, and will not expire until 2008. Finally, the Secretary of the Interior has directed the BLM to look into additional lands in the Northeast National Petroleum Reserve – Alaska that may be made available for environmentally sound oil and gas leasing. Reducing the number of acres available for energy development would contradict this direction, and would go against the President's stated National Energy Policy. Section 2.4 (Alternatives Considered but Eliminated from Detailed Analysis) of the Amended IAP/EIS discusses other alternatives that were considered, but eliminated from detailed analysis.

### **Findings**

Alternative B would not significantly restrict subsistence use by communities in or near the Planning Area (Anaktuvuk Pass, Atkasuk, Barrow, and Nuiqsut). The impacts to subsistence resources and access to resources would be minimal, yet displacement of the Teshekpuk Lake Herd caribou could occur. However, adequate stipulations and ROPs have been incorporated in Alternative B, including specific procedures for subsistence consultation with directly affected subsistence communities, and requirements for extensive studies of caribou movement, to ensure that significant restrictions to subsistence uses and needs would occur.

### **Evaluation and Findings for the Cumulative Case**

The goal of the cumulative analysis is to evaluate the incremental impact of the current action in conjunction with all past, present, and reasonably foreseeable future actions in or near the Planning Area. The cumulative analysis considers in greatest detail activities that are more certain to happen, and activities that were identified as being of great concern during scoping. Oil and gas activities considered in the analysis include past development and production, present development, reasonably foreseeable future development, and speculative development. Activities not associated with oil and gas are also considered. All reasonably foreseeable future activities that may contribute to cumulative effects are considered in this analysis.

Actions included in the cumulative analysis include, but are not limited to the following:

- Offshore exploration and development in the Beaufort Sea;
- Currently-producing fields/developments (Prudhoe Bay, Kuparuk, Alpine, Meltwater);
- Possible future developments, such as the Alpine Satellite Development;
- Additional lease sales both on State of Alaska lands and in the Northwest National Petroleum Reserve - Alaska;
- The continuation of exploration on current leases in the Northeast National Petroleum Reserve - Alaska and additional lease sales in this same area; and
- The planned Alaska Department of Transportation access road to Nuiqsut.

## **Evaluation of the Effect of Such Use, Occupancy, or Disposition on Subsistence Uses and Needs**

Section 4.7 (Effects of the Cumulative Case) of the Amended IAP/EIS contains a detailed description of the cumulative-case scenario, including past effects, present effects, and the future possible oil field and infrastructure development that this evaluation uses. This assessment and finding assumes that all future development in the National Petroleum Reserve – Alaska would be subject to the stipulations and ROPs proposed in the Amended IAP/EIS. The cumulative analysis expands the area of potential impact beyond the planning area, to the entire North Slope Borough. Additionally, the impacts to subsistence use of migratory species, such as waterfowl, are also discussed.

The analysis of the effects of the cumulative case on subsistence presented in Section 4.7.8.12 (Analysis of Cumulative Effects by Resources, Subsistence) indicates that cumulative activity on the North Slope has the potential to significantly restrict subsistence use for the communities of Anaktuvuk Pass, Atkasuk, Barrow, and, especially, Nuiqsut. Planned development in the Northeast National Petroleum Reserve – Alaska extends from the Colville River Delta north of Nuiqsut to an area southwest of the village, which would effectively encircle the community, making it necessary for subsistence hunters traveling in nearly every direction to pass through some kind of development on the way to subsistence harvest areas. Because Iñupiat hunters are reluctant to use firearms near oil production facilities and pipelines, there would be a perceived barrier to harvest in these areas even if leaseholders did not object to harvester access. Subsistence users currently avoid the Kuparuk and Meltwater areas because of the physical barriers pipelines and elevated gravel roads pose to winter snowmachine travel, and have expressed concerns about hunting close to oil production and processing facilities because of perceived regulatory barriers (ENSR 2004). Additionally, many community members fear contamination of their subsistence resources by oil production facilities.

Subsistence resources also have the potential to be impacted under the cumulative case. As stated in Section 4.6.8.9:

Cumulative effects on caribou distribution and abundance are likely to be long-term, lasting as long as the life of the oil fields. Any reduction in the calving and summer habitat use by cows and calves from future onshore leasing would represent a functional loss of habitat that could result in long-term effects on the caribou herds' productivity and abundance.

The effects of oil and gas activities in the National Petroleum Reserve – Alaska would be greatest on those herds that use the Planning Area, specifically the Teshekpuk Lake and the Western Arctic herds. Currently, the Teshekpuk Lake Herd is the primary source of caribou for the communities of Anaktuvuk Pass, Atkasuk, Barrow, Nuiqsut, and Wainwright. Any substantial decrease in the population numbers of this herd would have a substantial impact on all five communities. If the decrease occurred during times of unsuccessful bowhead whaling, the effects would be devastating for Atkasuk, Barrow, Nuiqsut, and Wainwright. The additional development pressure envisioned by the cumulative-case scenario could exacerbate changes in abundance and productivity of caribou, and these changes could, in turn, adversely affect subsistence harvests.

Impacts to migratory waterfowl, especially black brant, have the potential to negatively affect subsistence hunters in the Southwest Region of Alaska, especially in the Yukon-Kuskokwim Delta (YK Delta). According to the Alaska Department of Fish and Game Community Profile Database, communities in this area are some of the largest users of migratory waterfowl, especially during the springtime, with this resource comprising between 1.56% to as much as 6.18% of their annual yearly harvest, depending on the community. The analysis of impacts to migratory waterfowl indicate that while there is the potential for there to be negative effects as a result of both non-oil and gas and oil and gas activity, these effects are primarily dependent upon loss of habitat as a result of construction activity. Given the fact that black brant are the primary species of concern for the YK Delta with regard to the NE Amendment, and comprise only one portion of their migratory bird harvest (at most 3%, according to ADF&G), potential impacts as a result of this plan do not constitute a significant restriction of subsistence use.

Any future gravel roads built from the National Petroleum Reserve – Alaska or any other North Slope development to the existing haul road could allow access to sport hunters, particularly if there were no restrictions on hunting from or near the roads. Any increase in the numbers of hunters in the area would increase competition for caribou, moose, fish, or other subsistence resources.

The offshore development and transport that is possible under a cumulative case could result in oil spills in the marine environment. Any oil spill that tainted, or was perceived to taint, whales or other marine mammals of importance to subsistence users would have a significant negative effect on those users. If such a spill affected migration patterns or distributions of any marine mammal used for subsistence, it would also have significant negative effect on subsistence users.

From 1990 to 1997, the North Slope's permanent population grew at an annual rate of 2.7 percent, and Nuiqsut was the fastest growing village. This rate of growth could continue for the foreseeable future with or without the development envisioned in the cumulative scenario discussed. The effects of such growth on competition for subsistence resources are difficult to predict, but it is possible that over time there would be increased competition among local subsistence users. It is unlikely that the transient workers associated with oil and gas development would add to the competition, because they are ineligible for the subsistence priority under existing federal regulations.

### **Evaluation of the Availability of Other Lands for Oil and Gas Exploration and Development**

The NPRPA, as amended, gives the Secretary of the Interior the authority to conduct oil and gas leasing in the National Petroleum Reserve – Alaska. However, the law prohibited petroleum production from occurring in National Petroleum Reserve – Alaska until authorized by Congress. In 1980, Congress granted that authorization and directed the Secretary of the Interior to undertake a program of competitive leasing of potential oil and gas tracts in the Reserve. The President's energy policy directs the Secretary of the Interior to "consider additional environmentally responsible oil and gas development, based on sound science and the best available technology, through further lease sales in the National Petroleum Reserve – Alaska." The BLM is undertaking this Amended IAP/EIS to fulfill the mandates of the President's energy policy as well as BLM's responsibilities to manage these lands under authority of the two laws above and other authorities cited elsewhere in this Amended IAP/EIS. Other lands managed by the BLM are either too remote for economically viable oil and gas production, or have a low probability of containing sufficient quantities of oil or gas. State and Native Corporation Lands cannot be considered in a BLM plan, and other BLM lands outside of Alaska are not considered under ANILCA as per BLM Policy.

### **Evaluation of Other Alternatives that would Reduce or Eliminate the Use, Occupancy, or Disposition of Public Lands Needed for Subsistence Purposes**

Alternatives that would reduce or eliminate the use of public lands needed for subsistence include: 1) making more land in the Northeast National Petroleum Reserve – Alaska unavailable for oil and gas leasing, or 2) not allowing oil and gas activity to occur. Unfortunately, neither of these alternatives is viable, given the fact that Congress created the National Petroleum Reserve – Alaska as a petroleum reserve, with specific legislation that delineates its purpose and proposed use. Removing or changing its designation as a petroleum reserve would require another act of congress. Furthermore, the 1998 Northeast IAP/EIS ROD allowed the BLM to enter into contract with several oil companies, by leasing land for oil and gas exploration. All of these leases are still in effect, and will not expire until 2008. Finally, the Secretary of the Interior has directed the BLM to look into additional lands in the Northeast National Petroleum Reserve – Alaska that may be made available for environmentally sound oil and gas leasing. Reducing the number of acres available for energy development would contradict this direction, and would go against the President's stated National Energy Policy. Section 2.4 (Alternatives Considered but Eliminated from Detailed Analysis) of the Amended IAP/EIS discusses other alternatives that were considered, but eliminated from detailed analysis.

### **Findings**

The cumulative case, as presented in this analysis, would result in a reasonably foreseeable and significant restriction of subsistence use for the communities of Anaktuvuk Pass, Atkasuk, Barrow, and Nuiqsut, due to a decrease in resource abundance, significant alteration in the distribution of resources, and a significant restriction on the access of subsistence users. This finding requires a positive determination pursuant to ANILCA § 810.

The distribution of caribou populations on the North Slope has been affected by Prudhoe Bay development, and access to subsistence resources has been compromised there. Although procedures will be in place to ensure that future development affects access as little as possible, it is still probable the total area available for subsistence

purposes will be reduced. If a major oil spill were to occur in the future, it could significantly affect both populations and distributions of fish, and whales and other marine animals, causing significant restrictions to subsistence resources. Oil and gas infrastructure located in core caribou calving or insect-relief areas would result in the displacement, and possible reduction, of the herd. Population growth would result in a greater number of residents relying on local resources to meet their needs. In addition, construction of a road that would allow access to the area could cause an increase in competition for subsistence resources by sport hunters. These restrictions have the potential to affect Anaktuvuk Pass, Barrow, Atqasuk, and Nuiqsut.

### **Notice and Hearings**

ANILCA § 810(a) provides that no “withdrawal, reservation, lease, permit, or other use, occupancy or disposition of the public lands which would significantly restrict subsistence uses shall be effected” until the federal agency gives the required notice and holds a hearing in accordance with ANILCA § 810(a)(1) and (2). The BLM provided notice in the *Federal Register* that it has made positive findings pursuant to ANILCA § 810 that the cumulative case presented in the Amended IAP/EIS meets the “may significantly restrict” threshold. As a result, public hearings were held in the potentially affected communities of Anaktuvuk Pass, Atqasuk, Nuiqsut, and Barrow. Notice of these hearings were in the *Federal Register* and by way of the local media, including the *Arctic Sounder* newspaper and KBRW, the local Barrow radio station, with coverage to all villages on the North Slope.

### **Subsistence Determinations Under ANILCA § 810(a)(3)(A), (B), and (C)**

ANILCA § 810(a) provides that no “withdrawal, reservation, lease, permit, or other use, occupancy or disposition of the public lands which would significantly restrict subsistence uses shall be effected” until the federal agency gives the required notice and holds a hearing in accordance with ANILCA § 810(a)(1) and (2), and makes the three determinations required by ANILCA § 810(a)(3)(A), (B), and (C). The three determinations that must be made are: 1) that such a significant restriction of subsistence use is necessary, consistent with sound management principles for the utilization of the public lands; 2) that the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other such disposition; and 3) that reasonable steps will be taken to minimize adverse impacts to subsistence uses and resources resulting from such actions [16 U.S.C. § 3120(a)(3)(A), (B), and (C)].

The BLM has found in this subsistence evaluation that the cumulative case considered in this Amended IAP/EIS would significantly restrict subsistence uses. Therefore, BLM undertook the notice and hearing procedures required by ANILCA § 810 (a)(1) and (2) in conjunction with release of the Draft EIS in order to solicit public comment from the potentially affected communities and subsistence users.

The determinations below satisfy the requirements of ANILCA § 810(a)(3)(A), (B), and (C).

### **A. Significant Restriction of Subsistence Use is Necessary, Consistent with Sound Management Principles for the Utilization of Public Lands.**

The BLM has prepared this EIS to fulfill the mandates of the President’s energy policy and the responsibility to manage the NPR-A under the authority of two laws passed in 1976—The Naval Petroleum Reserves Production Act (NPRPA) and the Federal Land Policy and Management Act (FLPMA). The President’s energy policy directs the Secretary of the Interior to “consider additional environmentally responsible oil and gas development, based on sound science and the best available technology.” The NPRPA authorizes and directs the Secretary of the Interior to “further explore, develop and operate” the National Petroleum Reserve-Alaska (10 U.S.C. § 7421). At the same time, the statute also requires that all oil and gas activities “undertaken pursuant to this section shall include or provide for such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on the surface resources” of the NPR-A (42 U.S.C. § 6508).

It was in furtherance of these objectives, together with other management guidance found in the NPRPA, FLPMA, NEPA, and ANILCA that this EIS was undertaken. After considering a broad range of alternatives, a proposed action was developed that serves to make available additional lands for environmentally responsible oil and gas exploration and development, through further lease sales in the National Petroleum Reserve – Alaska, while minimizing impacts to important subsistence resources and subsistence-use areas. The resulting Proposed Action

considers the necessity for economically feasible development while providing effective protections to minimize any impacts on subsistence resources and uses. Under the Proposed Action, the performance-based stipulations and required operating procedures which accompany Alternative D serve as the primary mitigation measures to be used to reduce the impact of the proposed activity on subsistence resources.

The BLM has considered and balanced a variety of factors with regard to the proposed activity on public lands, including, most prominently, the comments received during the public meetings and hearings which stressed the importance of protecting essential caribou movement/migration corridors, located to the east of Teshekpuk Lake. The BLM has determined that the significant restriction that may occur under the Proposed Action, when considered together with all the possible impacts of the cumulative case, is necessary, consistent with sound management principles for the use of these public lands, and for BLM to fulfill the management goals for the Planning Area as guided by the statutory directives in the NPRPA, FLPMA, and other applicable laws.

#### **B. The Proposed Activity will Involve the Minimal Amount of Public Lands Necessary to Accomplish the Purposes of such Use, Occupancy or Other Disposition.**

The BLM has determined that the Preferred Alternative involves the minimal amount of public lands necessary to accomplish the purposes of the proposed action—which is to make additional lands available for oil and gas leasing in the Northeast NPR-A. Alternatives that varied between opening no additional lands, some additional lands, or all lands to leasing were analyzed. The final Proposed Action allows additional leasing in less-sensitive areas west of Teshekpuk Lake, and creates seven new large lease tracts north of the lake that have a limited amount of acres available for surface occupancy. In addition, Teshekpuk Lake has been deferred from leasing for ten years, and the Colville River Special Area has been deferred for five, which together comprise nearly a million acres.

#### **C. Reasonable Steps will be taken to Minimize Adverse Impacts upon Subsistence Uses and Resources Resulting from such Actions.**

When BLM began its NEPA scoping process for the current plan amendment, it internally identified subsistence as one of the major issues to be addressed. In order to assure that the best and most up-to-date and reliable information was available, a subsistence specialist (Stephen Braund and Associates) was contracted to conduct the analysis of impacts to subsistence, including access, harvests, and traditional use patterns. This information, as well as the results of public scoping meetings in the villages of the North Slope, meetings with the NPR-A Subsistence Advisory Panel, and consultation with tribal and local governments, was used to craft the final proposed action. In addition, the BLM took into consideration comments from villages and individuals of the North Slope during the ANILCA Subsistence Hearings. This information resulted in several modifications to the former preferred alternative, and resulted in Alternative D, the Proposed Action. These modifications include:

- Allowing only 300 acres of total disturbance as a result of permanent oil and gas facilities in the seven new large lease tracts north of Teshekpuk Lake;
- The No Surface Occupancy zone that excludes permanent oil and gas facilities including pipelines and roads located in the primary migration/travel corridor for the Teshekpuk Lake Herd east of Teshekpuk Lake;
- The No Surface Occupancy zone located southeast of Teshekpuk Lake;
- Stipulations H-1 and H-2, which require additional consultation/notification efforts by the oil industry to potentially affected communities;
- Various K-stipulations, which protect specific resources and habitat necessary for subsistence use.

Given these steps, as well as the other performance-based stipulations and required operating procedures the BLM has determined that the Proposed Action includes all reasonable steps to minimize adverse impacts on subsistence uses and resources.

**Appendix 9**  
**Example of an 810 Evaluation for an EA**  
Compliance with ANILCA Section 810

COMPLIANCE WITH ANILCA SECTION 810  
EVALUATION AND FINDING

Applicant: Name of Applicant, d.b.a. Name of Company  
Serial No.: FF#####

EVALUATION

**Effect of proposed action on subsistence uses and needs**

Fisheries:

The proposed action would not significantly reduce harvestable fisheries resources that are available for subsistence use. Guided activity will focus on big game hunting. Any fishing activity will be secondary and minor. The proposed action would not alter the distribution, migration or location of harvestable fisheries resources. Approved mitigation measures would prevent degradation of adjacent water sources and fisheries habitat. The proposed action will not create any legal or physical barriers that would limit access by subsistence users of the fisheries resource.

Wildlife:

The proposed action of guiding for big game hunting in the North Fork drainage would not appreciably reduce harvestable wildlife resources that are available for subsistence taking on BLM administered lands. Guided hunts would primarily occur within the North Fork drainage with caribou and an occasional moose or bear being the species of interest. Guided hunting activity would result in the take of a portion of these wildlife populations as allowed under State regulations for the taking of wildlife. Harvest of caribou, moose and bear would be limited to a small number of animals as the applicant guides less than 12 hunters per year. The Western Arctic caribou herd is currently estimated at about 490,000 animals and harvest regulations are extremely liberal. In 1998 the density of moose in the Squirrel River was estimated at 1 moose per square mile with high bull: cow ratio indicating that the population is currently at a level that can sustain both sport and subsistence harvest. Bear populations in the unit are considered stable and harvest regulations are stable.

The proposed action would occur in an area that is fairly remote from local villages and important subsistence use areas. The proposed base camp is about 30 miles from Kiana, 32 miles from Noorvik and 50 miles from Kotzebue. Local subsistence hunters from Kiana, Noorvik and other villages in the region may hunt moose and caribou in the Squirrel River drainage. However, the Western Arctic caribou herd migrates through the region and generally provides local residents with hunting opportunities close to their villages. According to Schroeder et. al. (1988) residents of the NANA region have traditionally used the lower Squirrel River for moose hunting. The most intensive subsistence activity is believed to be concentrated on lands conveyed or selected by the Native Village corporations. Subsistence activities are a key factor in the selection of lands by Native individuals and corporations, and Native



Allotments are typically claimed based on a family's use of a site for subsistence activities. Selected lands are concentrated on the lower reaches of the Squirrel River.

The proposed action would not alter the distribution, migration or location of harvestable wildlife resources. Temporary camps and hunting activity may displace animals in the immediate vicinity, but such impacts would occur only during the short time that camps are in use. The proposed action would not create any legal or physical barriers that would limit subsistence harvest and access. The proposed action area is open for both sport and subsistence harvest, as regulated by the State of Alaska. If any restrictions are placed on harvest of wildlife resources for the management of game populations, subsistence is given preference over sport harvest.

Other Resources:

The proposed action would not appreciably impact any other harvestable resources such as wood, water, berries or vegetation. Hunting and guiding activities would occur at locations far from local villages and traditional gathering areas tend to be on Native owned and selected lands near villages.

**Availability of other lands for the purpose sought to be achieved:**

The proposed action includes BLM-administered lands that are within the applicant's guiding area of Unit 23, Guide Unit 23-06. About half of the land within this unit is BLM land. There are large tracts of Park Service and native corporation land, and some state land. Lands available for the purposes proposed by the applicant are limited to BLM lands that are accessible from the base camp. Therefore, no other lands were considered.

**Other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes:**

The no action alternative would require BLM to reject the permit application; however, there is no substantial evidence that would indicate a significant impact as a result of the proposed action. No other alternatives were evaluated.

**FINDING:**

The proposed action will not significantly restrict subsistence uses. No reasonably foreseeable and significant decrease in the abundance of harvestable resources or in the distribution of harvestable resources, and no reasonably foreseeable limitations on harvester access have been forecasted to emerge as a function of the action that is analyzed in this document.

Prepared by: \_\_\_\_\_  
Name, Title

Approved by \_\_\_\_\_  
Field Office Manager

**References:**

Robert Schroeder, David Anderson, and Grant Hildreth. 1987. *Subsistence Use Area Map Atlas for Ten Kotzebue Sound Communities*. Maniilaq Association and Division of Subsistence, Alaska Dept. of Fish and Game, Juneau